

## Nonpunitive Disciplinary Measures

### GUIDELINES FOR CORRECTIVE ACTIONS

Commanders, unit leaders, and noncommissioned officers (NCOs) must deal with a broad spectrum of misconduct. The most serious cases are crimes familiar to a civilian society and serious military offenses, such as homocides, assaults, drug-related offenses, and desertion. Less serious civilian and military offenses are loosely described as minor offenses. The least serious are insignificant acts of misconduct that may not even rise to the level of an offense. These may be addressed without the necessity of punishment.

When a soldier commits an offense, you have a wide variety of options. Each has its attributes and values. Consider some action for each offender, beginning with the least severe, to meet necessary goals. Your choice will depend in part on the nature of the misconduct; it will also depend upon the goal you seek. Punishment generally has one or more of the following goals:

- To protect society against a repetition of the offense.
- To reform the offender so he will not repeat the offense.
- To deter others from considering and committing such an offense.

Minor offenses may justify nonjudicial action under UCMJ, Article 15. These penalties are strictly limited. Your options for less significant misconduct can be loosely collected under the title of adverse administrative actions.

Adverse administrative actions emphasize correction. They recognize that the misconduct does not result from intentional or gross failure to comply with standards of military conduct. Instead, misconduct results from simple neglect, forgetfulness, ignorance, laziness, inattention to instruction, sloppy habits, immaturity, and difficulty in adjusting to the disciplined military life. Implicit in adverse administrative actions is the belief that the offender can, with proper guidance, become an efficient and competent soldier.

In dealing with less significant acts of misconduct, you have an excellent opportunity to

salvage good soldiers and to teach young soldiers the errors of their ways without imposing a penalty that they may never overcome. Many of the procedures available permit you to deal with this type of misconduct without requiring a formal report. You can thus correct soldiers and allow them to return to duty, sometimes without serious blemish to their record as would happen if they were subjected to nonjudicial punishment.

In these instances, you primarily teach discipline and standards of conduct; you should be less interested in punishing. This is a fine but crucial line. If you seek to punish, you should consider an Article 15 or court-martial; if you primarily seek to teach, you should consider adverse administrative actions.

Wise use of adverse administrative actions frequently results in the soldier adjusting and improving his conduct so that he does not ultimately become a candidate for judicial action, Article 15 action, or administrative separation or reduction. In some instances, however, judicial or nonjudicial punitive measures are immediately appropriate. One of the tests of a good leader is to determine correctly which measure or combination of measures is appropriate for a particular soldier at a particular time.

### TYPES OF ADVERSE ADMINISTRATIVE ACTIONS

In adverse administrative actions, the personality of an offender and his state of mind at the time of his misconduct determine the value of each action. In other words, what might work well with one soldier might be useless for another. The situation might warrant a combination of two or more of the following actions.

#### Withholding Privileges

You may withhold some privileges, for example, pass privileges, to maintain good order and discipline. (See AR 630-5, Chapter 10.) The privileges revoked should relate directly to the act of misconduct. For example, revoking driving privileges would not be appropriate for an assault offense, but removal of post exchange (PX) privileges might be appropriate for a soldier

guilty of disorderly conduct in the PX. You may also withhold a benefit, award, or promotion if a soldier shows a lack of readiness, fitness, or responsibility.

Withholding privileges can be an incentive for improved behavior. Like other corrective actions, the effectiveness of withholding privileges depends on your communicating your intent and determination to the soldier concerned. It also requires that the restriction relate in importance, seriousness, and duration to the transgression and to the desired correction. Too long or disproportionate an action can easily discourage soldiers and hinder correction.

If you have direct control over a privilege, simply inform an offender that you are withholding the privilege. When a higher authority controls the activity, you typically request, through channels, revocation of the privilege.

### **Admonitions And Reprimands**

You may issue admonitions or reprimands, either oral or written, as administrative corrective measures. (See AR 600-37.)

The following individuals may orally admonish or reprimand a soldier, regardless of the soldier's rank:

- Any supervisor in the soldier's chain of supervision.
- Any commander in the soldier's chain of command.
- Any higher ranking soldier.

They may do so where and in the manner they deem most appropriate.

Written admonitions and reprimands may be filed in a soldier's military personnel records jacket (MPRJ). For enlisted soldiers, they are issued and filed by—

- Any commander in their chain of command.
- School commandants.
- Any general officer (including those frocked to the rank brigadier general).
- Officers with general court-martial authority over them.

Immediate supervisors of enlisted soldiers may also issue written reprimands or admonitions, but they may not file them in the soldier's MPRJ unless they also serve in one of the other capacities.

The following individuals may issue admonitions or reprimands to commissioned or warrant officers and file them in their MPRJs:

- Any commander in their chain of command (if the commander is senior in grade or date of rank to the recipient).
- School commandants.
- Their rater, intermediate rater, or senior rater.
- General officers (senior to the recipient).
- Officers with general court-martial convening authority over them.

Regardless of the issuing authority, an admonition or reprimand may be filed in the official military personnel file (OMPF) of an enlisted soldier or officer only upon direction of a general officer (including officers frocked to the rank of brigadier general) or an officer exercising general court-martial convening authority over them.

Since admonitions and reprimands may also be imposed by nonjudicial punishment, you should ensure that written administrative ones include a statement that it is an administrative measure and not punishment under UCMJ, Article 15.

### **Rehabilitation**

You may elect to correct a soldier with counseling or corrective training.

### **COUNSELING**

Sometimes counseling takes the form of discussion or special instruction over a long period. It maybe written but is usually oral. You may personally carry it out, or your representative, who may be an NCO, may do it. Sometimes it leads to professional counseling by a chaplain, judge advocate, psychiatrist, debt counselor, or

marriage counselor. A counselor must try to learn—

- What produced the undesirable conduct.
- Why a soldier failed to maintain the desired standards.
- Why a soldier has a poor or unresponsive attitude.

The counselor should provide helpful advice and motivate the soldier to do better, not because he is threatened with unfavorable action if he fails to do so, but because his self-respect demands a better job. Counseling may inspire a soldier to correct his ways so as not to let down comrades, family, or others who have the soldier's loyalty and respect. It may also show the soldier that proper conduct offers more advantages than the hassling, harassment, or difficulties resulting from misconduct or poor performance.

Skill at counseling does not come easily or quickly. Officers and NCOs who study the subject enhance their chances of success. Experience and knowledge of human motivation in general and of the individual personality in particular enhance the counselor's ability to communicate with the soldier. By knowing and using the proper standards, a counselor will more likely succeed in improving the conduct and attitude of the counseled soldier.

You must adequately counsel soldiers before initiating action to separate them for—

- Inability to fulfill military obligations due to parental objections.
- Personality disorders.
- Unsatisfactory entry level performance and conduct.
- Unsatisfactory performance.
- Minor disciplinary infractions.
- A pattern of misconduct.

You must also record the counseling in writing. (See AR 635-200, paragraph 1-18b, for guidance.)

## **CORRECTIVE TRAINING**

Corrective training is for soldiers who have demonstrated that they need and would benefit from additional instruction or practice in a particular area. Take care to give training that has a reasonable relationship to the soldier's deficiency. Extra training and instruction, if timely and appropriate, may correct deficiencies and eliminate the need for formal disciplinary measures in the future. Do not use extra training and instruction as punitive measures. You must distinguish extra training and instruction from punishment or even the appearance of punishment. Soldiers should have extra training or instruction only as long as they need it to correct deficiencies. If they perceive the training or instruction as punishment, all training and instruction will be degraded and their value jeopardized. The following examples illustrate the proper use of training and instruction:

- A soldier appearing in improper uniform may need special instruction in how to wear the uniform properly.
- A soldier in poor physical shape may need to do additional conditioning drills and participate in extra field and road marches.
- A soldier with unclean personal or work equipment may need to devote more time and effort to cleaning the equipment. The soldier may also need special instruction in its maintenance.
- A soldier who executes drills poorly may need additional drill practice.
- A soldier who fails to maintain housing or work areas in proper condition or abuses property may need to do more maintenance to correct the shortcoming.
- A soldier who does not perform assigned duties properly may be given special formal instruction or more on-the-job training in those duties.
- A soldier who does not respond well to orders may need to participate in additional drill and exercises to improve.

As the company commander, you have the authority to use these measures since they are for training and instruction. Commandeers at

all levels must ensure that training and instruction are not used in an oppressive manner to evade imposing nonjudicial punishment under UCMJ, Article 15. You should not ordinarily note deficiencies corrected with training and instruction in a soldier's record, and you should consider such deficiencies closed incidents.

### **Administrative Reductions**

Enlisted soldiers may be reduced in rank by one or more pay grades for conviction by a civilian court and by one pay grade for inefficiency. Orders published according to AR 310-10 will announce reductions. AR 600-200, paragraph 6-15, contains further guidance about publishing such orders and the effective date of reduction. It also provides guidance for computing the date of rank.

You should inform soldiers of their right to appeal a reduction. AR 600-200, paragraph 6-10, provides guidance for filing appeals for reductions for inefficiency or civil court convictions. The authority to take final action on appeals cannot be delegated.

The rank of the commander who may approve the reduction depends on the rank of the soldier involved. For example, a company, troop, battery, or separate detachment commander can reduce soldiers in the grade of E-2, E-3, or E-4. Only a commander of an organization authorized a colonel or higher as its commander can reduce a sergeant first class. AR 600-200, paragraph 6-1, outlines reduction authority for each grade.

### **CONVICTIONS**

The civilian court sentence for a convicted soldier (or one adjudged a juvenile offender) determines reduction for civilian conviction. If an enlisted soldier's sentence is death or confinement for 1 year or more and the sentence is not suspended, the soldier will be reduced to private with no right to a board hearing. If the sentence included one of the following and the soldier is serving in the grade of E-5 or above the case must be referred to a reduction board for consideration:

- Confinement for more than 30 days but less than 1 year if the sentence was not suspended.

- Confinement of 1 year or more if the sentence was suspended.

If the soldier is serving in the grade of E-4 or below, the reduction authority must consider reduction of one or more grades.

A soldier may be considered for reduction with a conviction for less severe offenses or with less severe sentences than those previously mentioned. Consult AR 600-200, Table 6-1, for more detailed conditions for administrative reductions due to civil conviction.

For soldiers below the rank of sergeant, initiate the reduction by—

- Submitting a memorandum through channels to the soldier's personnel section.
- Requesting publication of reduction orders.

A soldier may be reduced in rank for civilian conviction, regardless of any appeal of his civil conviction. In accordance with AR 600-200, paragraph 6-17c, the soldier's grade will be restored upon reversal of the conviction.

### **INEFFICIENCY**

Reduction for inefficiency is limited to one pay grade, and the soldier normally must have served in an assigned position in the same unit for at least 90 days. The one-grade limitation also applies when a soldier is reduced for long-term personal indebtedness that he has not tried to resolve. Do not use reduction for inefficiency—

- For an offense of which the soldier has been acquitted by a court-martial.
- In lieu of UCMJ, Article 15.
- For a single act of misconduct if the soldier's performance is otherwise satisfactory.

If you intend to reduce a soldier for inefficiency, you must notify him in writing of the proposed reduction and the reasons for it. You should base your grounds for reduction on personal knowledge and observation over a reasonable period. The soldier must acknowledge receipt of the notice by endorsement and may submit a rebuttal. You may then request, in writing, through channels, reduction orders or convening of a board.

## PROCEDURES

Under the provisions of AR 600-200, paragraphs 6-9 and 6-10, you must furnish soldiers being reduced in rank, by endorsement, copies of the reduction orders and inform them of their right to appeal. A soldier must acknowledge receipt of the orders by endorsement and accept the reduction or state his intent to appeal.

A reduction board is required for sergeants and above except when reduction is mandatory or the board is waived. This board must convene within 30 days of when the Army receives documentation proving that the conditions for reduction exist. A soldier's decision not to appear will be in writing and will signify acceptance of the action.

When a board is required, the convening authority must ensure that it consists of at least three voting members. A majority of the appointed members is a quorum and must be present at all sessions. Enlisted soldiers appointed to such boards must be senior in grade or date of rank to the soldier being considered for reduction. For inefficiency cases only, at least one board member will be knowledgeable of the soldier's MOS.

The board may recommend the following:

- Reduction of one or more grades (except for inefficiency which is limited to one grade).
- Retention of current rank.
- Reassignment within pay grade.
- A combination of any of the above.

It may not recommend lateral appointments from specialist to corporal or vice versa. The convening authority may approve or disapprove any part of the board's recommendation as long as doing so does not increase the severity of the board's recommendation.

### Revocation Of Security Clearance

You must ensure that soldiers who receive security clearances are reliable. When you receive information indicating that a soldier should not have a security clearance, you must immediately suspend the soldier's access to classified information.

Conduct that merits revocation or suspension of a security clearance includes-

- Criminal and immoral activities.
- Abuse of drugs and alcohol.
- Excessive indebtedness.
- Repeated AWOL status.

You may also revoke a clearance if you believe the soldier is subject to coercion or undue influence because he has a close relative living in a communist country. (See AR 604-5.)

When derogatory information is forwarded to you or your organization's security officer, review it to ensure that it is complete and to assess its security significance. Then, forward it to the central personnel security clearance facility (CCF), which will determine if it warrants clearance revocation. You may, in the meantime, suspend the soldier's security clearance. (See AR 604-5, Annex A, Appendix C, for procedures.) Soldiers may rebut in writing a proposed revocation; if clearance is revoked, they have a right to appeal to Headquarters, Department of the Army.

### Bar To Reenlistment

You may initiate action to bar reenlistment when immediate administrative separation is not warranted but a soldier's desirability for retention is not consistent with the high qualities demanded by the Army. You should not initiate a bar to reenlistment against a soldier who has been assigned to the unit for less than 90 days or who is permanently leaving the unit in 30 days or less (ETS or PCS).

You may bar soldiers from reenlistment for deficiencies of character, conduct, attitude, proficiency, and motivation.

These deficiencies often include—

- Tardiness for formations, details, or duties.
- Being AWOL for 1 to 24 hours.
- Losses of clothing and equipment.
- Substandard personal appearance and hygiene.
- Persistent indebtedness.
- Frequent traffic violations.

- Recurrent punishments under UCMJ, Article 15.
- Use of sick call without medical justification.
- Unwillingness to follow orders.
- Untrainability.
- Inability to adapt to the military.
- Failure to manage personal affairs.
- Frequent difficulties with fellow soldiers.
- Involvement in immoral acts.
- Failure to qualify with weapons.
- Failure to pass Army physical fitness tests.
- Lack of potential for further service.

When initiating such an action, prepare DA Form 4126-R summarizing the grounds for a bar. Include all information supporting your recommendation. Base this information on facts (date, place, and occurrence) and substantiate it with official remarks to ensure that you make an official record of each occurrence. Do not consider the soldier's ETS, reenlistment intent, or any pending judicial or administrative separation action.

Upon receiving DA Form 4126-R, the soldier may submit a statement in his own behalf. You must allow the soldier 7 days to prepare comments and collect documents or other materials. Forward the file, including the soldier's rebuttal, through the chain of command to the approval authority. Anyone in the chain of command may disapprove the action and return it to you.

The approval authority for soldiers with less than 10 years of service at ETS is the first commander in the rank of lieutenant colonel or above or the special court-martial convening authority (SPCMCA), whichever is in the most direct line to the soldier. For soldiers with 10 to 18 years service or with over 20 years of service at ETS, the approval authority is the general court-martial convening authority (GCMCA) or first general officer in the chain of command. For those with 18 to 20 years of service at ETS, the approval authority is at Department of the Army level. Approval authority cannot be delegated.

You must review an approved bar to reenlistment at least every 6 months and 30 days before the soldier's PCS or ETS. After the first 6 month review, if you decide to leave the bar in place, you must inform the soldier that he or she may request voluntary separation under the provisions of paragraph 16-5, AR 635-200. You must also tell the soldier that you will initiate involuntary separation after the second 6 month review unless you should determine that it is appropriate to lift the bar. (See AR 601-280, paragraph 6-5i (6)). The bar may be removed or voided any time the soldier demonstrates his worthiness to be retained in the Army. Make such recommendations through the chain of command. The authority who approved the bar is the authority who can void it. Any commander in the chain of command, however, may disapprove the request to remove the bar to reenlistment and return it to the initiating unit. If the soldier is in a new jurisdiction, the new comparable authority acts on the recommendation.

### **Mos Reclassification**

You must recommend reclassification of an awarded MOS when (See AR 600-200, chapter 2)—

- The award of the MOS was in error.
- Disciplinary actions under the UCMJ adversely affect the soldier's eligibility to perform in his present MOS.
- The soldier does not have the security clearance required for the MOS.
- The soldier is appointed or reduced to the rank of an NCO or specialist that is not in line with or authorized for the MOS.
- The soldier loses the qualifications that enable him to perform in the MOS satisfactorily.
- The soldier is physically unable to perform the required duties. (See AR 600-60.)

You may recommend reclassification of an awarded MOS if the soldier does not efficiently perform the technical, supervisory, or other requirements of the MOS.

Initiate the action and process it through channels. In requesting reclassification of a soldier's MOS, summarize the grounds and include substantiating facts. The soldier may appear before a reclassification board that will

make recommendations to the appointing authority. According to the soldier's rank and MOS, the appointing authority or another authority up to DA level will take final action.

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